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7 IN THE UNITED STATES DISTRICT COURT
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9 BOBBY W. LEE, No. C 06-3847 CW (PR)
10 Plaintiff,
11 v. ORDER GRANTING
12 M. COLLIER, et al., DEFENDANTS' MOTION
13 Defendants. FOR SUMMARY JUDGMENT
14
15 _____/
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17 Defendants move for summary judgment on all of Plaintiff's¹
18 claims. Plaintiff opposes the motion. Having considered all of
19 the papers filed by the parties, the Court GRANTS the motion.
20 BACKGROUND
21 Plaintiff Bobby W. Lee, at the time of the incident that is
22 the subject of this litigation, was a state prisoner at Salinas
23 Valley State Prison (SVSP) in California. Defendants M. Collier,
24 L. Pennisi, and G. Lewis are or were correctional officers at SVSP.

25 On June 23, 2003, Plaintiff, who was scheduled to move to a
26 new cell, began moving his things from his old cell, #107, to his
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1 new cell, #110. Inmate Adegbenro,¹ who was housed in cell #107,
2 was helping Plaintiff move his belongings to cell #110. Inmate
3 Kinsey exited cell #110 to make room for Plaintiff's belongings.
4 During the move, Inmate Adegbenro attacked Correctional Officer M.
5 Denning, stabbing and slashing the officer with an inmate-
6 manufactured knife. Inmate Kinsey fought off two other
7 correctional officers who were attempting to come to Officer
8 Denning's aid. During the attack, Plaintiff retreated into cell
9 #110, where he assumed a prone, face-down position on the floor.
10 Officers eventually subdued Inmates Adegbenro and Kinsey. An
11 officer restrained Plaintiff with handcuffs and leg shackles, then
12 cut off Plaintiff's shirt and pants and removed his shoes.

13 Plaintiff was then escorted to an interview room, where he
14 made a statement that he was not involved in the attack and had no
15 knowledge of it beforehand. Then Plaintiff was placed in a holding
16 cage. Plaintiff informed the officers that he had legal documents
17 in his cell relating to an ongoing criminal appeal, and he was
18 assured that those documents would be transferred with him.

19 Defendant Pennissi and other correctional officers wrote
20 Crime/Incident Reports describing the attack on Officer Denning.
21 The reports disclose that Plaintiff did not participate in the
22 attack but assumed a prone, face-down position during it.
23 Defendant Lewis prepared a cover sheet for those reports, and
24 Defendant Collier signed the cover sheet.

25 Plaintiff and Inmates Kinsey and Adegbenro received Rules

26
27 ¹ The first names of the inmates are not provided by the
parties.

1 Violation Reports (RVR), and prison officials referred the incident
2 to the Monterey County District Attorney's office for possible
3 felony prosecution.

4 On the day of the incident, June 23, 2003, in an emergency
5 transfer, Plaintiff and Inmates Kinsey and Adegbenro were moved
6 from SVSP to Corcoran State Prison (CSP) and placed in the Secured
7 Housing Unit (SHU). On July 7, 2003, Plaintiff was transferred
8 from CSP's SHU to Ad/Seg, where he remained for fourteen months.
9 During that time, Plaintiff had five hearings before the CSP
10 Institutional Classification Committee (ICC). Each time, the ICC
11 determined that Plaintiff should remain in Ad/Seg. For each
12 hearing, Plaintiff received advance notice, at least twenty-four
13 hours to prepare, a written statement of the reasons for his
14 retention in Ad/Seg, the chance to call witnesses and present
15 evidence, and consideration for or assignment of a staff assistant.

16 On August 27, 2004, Plaintiff appeared before a Senior Hearing
17 Officer in the Department of Corrections for adjudication of his
18 RVR. The officer found Plaintiff not guilty of attempted murder
19 and referred him to the ICC for a placement review. On September
20 16, 2004, Plaintiff was transferred back to SVSP and placed again
21 in Ad/Seg because, according to the ICC,

22 your presence within the general population at SVSP is
23 deemed a threat to your safety, the safety of staff and
24 other inmates and the security of this institution. You
25 will remain in Ad/Seg under single cell status, pending
administrative review of your appropriate housing and
programming needs.

26 Decl. Lisa Sciandra at Ex. V, Ad/Seg Placement Notice.

27 On September 21, 2004, Plaintiff appeared before the ICC again

1 for an administrative review. The ICC decided he should remain in
2 Ad/Seg, noting that Officer Denning, the victim of the attack, had
3 "stated that he would not feel safe with Lee housed at SVSP and
4 would like him transferred." Opp. Ex. F, Committee's Comments,
5 Initial Ad/Seg Review. The ICC's stated reason for keeping
6 Petitioner in Ad/Seg was that he "[p]resents an immediate threat to
7 the safety of self or others." Opp. Ex. V, Placement Notice.
8 Plaintiff remained in Ad/Seg at SVSP for one month, until he was
9 transferred to Folsom State Prison, where he was placed in the
10 general population.

11 Plaintiff claims that Defendants denied him due process by
12 filing false reports and conspiring to place him in Ad/Seg.
13 Plaintiff further claims that Defendants denied him access to the
14 courts by confiscating and delaying the delivery of his legal
15 papers, thus interfering with his ability to appeal his underlying
16 conviction and causing him emotional distress. On June 11, 2007,
17 the Court issued an Order of Service and found these two federal
18 claims cognizable.²

19 Plaintiff also makes the following state law claims:
20 violations of California Penal Code §§ 118.1 (peace officers
21 knowingly and intentionally filing a false report), 132 (offering
22 forged or fraudulently altered documents as evidence), 133 (witness
23 tampering), and 134 (fraudulently preparing documents for "any
24 trial, proceeding, or inquiry whatever") and violations of
25 California Code of Regulations tit. 15, §§ 3338 (guidelines for

²⁷ The Court found that Plaintiff's equal protection claim was not cognizable.

1 hearings on segregated housing) and 3339 (guidelines for release
2 and retention in Ad/Seg).

LEGAL STANDARD

4 | I. Summary Judgment

5 Summary judgment is properly granted when no genuine and
6 disputed issues of material fact remain, and when, viewing the
7 evidence most favorably to the non-moving party, the movant is
8 clearly entitled to prevail as a matter of law. Fed. R. Civ. P.
9 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);
10 Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir.
11 1987).

12 The moving party bears the burden of showing that there is no
13 material factual dispute. Therefore, the court must regard as true
14 the opposing party's evidence, if it is supported by affidavits or
15 other evidentiary material. Celotex, 477 U.S. at 324; Eisenberg,
16 815 F.2d at 1289. The court must draw all reasonable inferences in
17 favor of the party against whom summary judgment is sought.

18 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
19 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d
20 1551, 1558 (9th Cir. 1991).

21 Material facts which would preclude entry of summary judgment
22 are those which, under applicable substantive law, may affect the
23 outcome of the case. The substantive law will identify which facts
24 are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
25 (1986).

26 Where the moving party does not bear the burden of proof on an
27 issue at trial, the moving party may discharge its burden of

1 production by either of two methods:

2 The moving party may produce evidence negating an
3 essential element of the nonmoving party's case, or,
4 after suitable discovery, the moving party may show that
5 the nonmoving party does not have enough evidence of an
6 essential element of its claim or defense to carry its
7 ultimate burden of persuasion at trial.

8 Nissan Fire & Marine Ins. Co., Ltd., v. Fritz Cos., Inc., 210 F.3d
9 1099, 1106 (9th Cir. 2000).

10 If the moving party discharges its burden by showing an
11 absence of evidence to support an essential element of a claim or
12 defense, it is not required to produce evidence showing the absence
13 of a material fact on such issues, or to support its motion with
14 evidence negating the non-moving party's claim. Id.; see also
15 Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 885 (1990); Bhan v.
16 NME Hosps., Inc., 929 F.2d 1404, 1409 (9th Cir. 1991). If the
17 moving party shows an absence of evidence to support the non-moving
18 party's case, the burden then shifts to the non-moving party to
19 produce "specific evidence, through affidavits or admissible
20 discovery material, to show that the dispute exists." Bhan, 929
21 F.2d at 1409.

22 If the moving party discharges its burden by negating an
23 essential element of the non-moving party's claim or defense, it
24 must produce affirmative evidence of such negation. Nissan, 210
25 F.3d at 1105. If the moving party produces such evidence, the
26 burden then shifts to the non-moving party to produce specific
27 evidence to show that a dispute of material fact exists. Id.

28 If the moving party does not meet its initial burden of
29 production by either method, the non-moving party is under no
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1 obligation to offer any evidence in support of its opposition. Id.
2 This is true even though the non-moving party bears the ultimate
3 burden of persuasion at trial. Id. at 1107.

4 DISCUSSION

5 I. Due Process Claim

6 Plaintiff claims his due process rights were violated because
7 Defendants placed him in administrative segregation based on false
8 charges of attempted murder, when they knew he had nothing to do
9 with the charged incident.

10 A. Legal Standard

11 Prisoners retain their right to due process subject to the
12 restrictions imposed by the nature of the penal system. Wolff v.
13 McDonnell, 418 U.S. 539, 556 (1974). Although prison disciplinary
14 proceedings do not require the full panoply of rights due a
15 defendant in a criminal prosecution, the Due Process Clause
16 requires certain minimum procedural protections if (1) state
17 statutes or regulations narrowly restrict the power of prison
18 officials to impose the deprivation, and (2) the liberty in
19 question is one of "real substance." Sandin v. Conner, 515 U.S.
20 472, 477-87 (1995); Wolff, 418 U.S. 539, 556-57 n.19 (1973).

21 "Real substance" will generally be limited to freedom from
22 (1) restraint that imposes "atypical and significant hardship on
23 the inmate in relation to the ordinary incidents of prison life" or
24 (2) state action that "will inevitably affect the duration of [a]
25 sentence." Sandin, 515 U.S. at 484, 487.

26 The hardship associated with administrative segregation, such
27 as loss of recreational and rehabilitative programs or confinement

1 to one's cell for a lengthy period of time, is not so severe as to
2 violate the Due Process Clause itself. Toussaint v. McCarthy, 801
3 F.2d 1080, 1091-92 (9th Cir. 1986) (applying Hewitt v. Helms, 459
4 U.S. 460, 468 (1983)). Thus, prisoners have no constitutional
5 right or interest independently protected by the Due Process Clause
6 to be free from placement in administrative segregation. Id. The
7 Ninth Circuit, however, has held that California statutes and
8 prison regulations create a liberty interest in freedom from
9 administrative segregation which is protected by due process. Id.
10 at 1098. California Code of Regulations tit. 15, § 3335(a) permits
11 placement in administrative segregation where the presence of an
12 inmate in the general population poses a threat to his own safety
13 and/or to an ongoing investigation of serious misconduct or
14 criminal activity. Section 3339(a) provides that release from
15 segregation shall occur at the earliest possible time. Toussaint
16 held that, when read together, these regulations create a liberty
17 interest in freedom from administrative segregation. Toussaint,
18 801 F.2d at 1098.

19 Therefore, before a prisoner may be placed in segregation for
20 the violation of prison rules, he or she must be afforded five
21 procedural protections. First, "written notice of the charges must
22 be given to the disciplinary-action defendant in order to inform
23 him of the charges and to enable him to marshal the facts and
24 prepare a defense." Wolff, 418 U.S. at 564. Second, "at least a
25 brief period of time after the notice, no less than 24 hours,
26 should be allowed to the inmate to prepare for the appearance
27 before the [disciplinary committee]." Id. Third, "there must be a

1 'written statement by the factfinders as to the evidence relied on
2 and reasons' for the disciplinary action." Id. (quoting Morrissey
3 v. Brewer, 408 U.S. 471, 489 (1972)). Fourth, "the inmate facing
4 disciplinary proceedings should be allowed to call witnesses and
5 present documentary evidence in his defense when permitting him to
6 do so will not be unduly hazardous to institutional safety or
7 correctional goals." Id. at 566. Fifth, "[w]here an illiterate
8 inmate is involved . . . or where the complexity of the issues
9 makes it unlikely that the inmate will be able to collect and
10 present the evidence necessary for an adequate comprehension of the
11 case, he should be free to seek the aid of a fellow inmate, or
12 . . . to have adequate substitute aid . . . from the staff or from
13 a[n] . . . inmate designated by the staff." Id. at 570.

14 In Superintendent v. Hill, 472 U.S. 445, 455 (1985), the
15 Supreme Court held that disciplinary proceedings do not satisfy due
16 process requirements unless there is "some evidence" in the record
17 to support the findings of the prison disciplinary board. The
18 Ninth Circuit requires that "some evidence" also support a decision
19 to place an inmate in segregation for administrative reasons. See
20 Toussaint, 801 F.2d at 1104-05 (citing Hill, 472 U.S. at 455).
21 Ascertaining whether the standard is satisfied does not require
22 examination of the entire record, independent assessment of the
23 credibility of witnesses or weighing of the evidence. Id.
24 Instead, the relevant question is whether there is any evidence in
25 the record that could support the conclusion reached. Id.

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1 B. Analysis

2 Plaintiff's claim that Officer Pennissi falsified a legal
3 document by stating that Plaintiff conspired to commit murder or
4 attempted murder seems to be referring to the Crime/Incident report
5 that Officer Pennissi prepared immediately after the attack on
6 Officer Denning. In that report, Officer Pennissi does not state
7 that Plaintiff participated in the attack, but only that Plaintiff
8 was moving to a new cell when the attack occurred. The report
9 corresponds with Plaintiff's own description of events surrounding
10 the attack by noting that Plaintiff was "caught up in the
11 commotion" and that he "retreated into cell 110" during the attack.
12 Therefore, this claim does not provide a basis for a due process
13 violation.

14 Plaintiff further argues that Officers Lewis and Collier
15 violated his rights because, "as supervisory staff/prison officials
16 [they] . . . signed documents which contained fabricated charges."
17 The evidence shows that the only documents signed by Officers Lewis
18 and Collier were the cover sheet for the Crime/Incident Reports.
19 Officers Lewis and Collier did not participate in issuing the RVR
20 to Plaintiff. *Id.*; Decl. Collier at 2. As stated above, Plaintiff
21 fails to show that Officer Pennissi's report or any other officers'
22 reports contained any fabrications. Plaintiff has thus provided no
23 basis on which a jury could find that Officers Lewis or Collier
24 signed or approved a false or fabricated report.

25 Plaintiff likewise has presented no evidence to refute
26 Defendants' declarations that they were not involved in the
27 decision to transfer Plaintiff to Ad/Seg or SHU. Those decisions
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1 were made by the ICC, of which Defendants were not members. In
2 making its decisions, the ICC relied on the Crime/Incident Report
3 prepared by Officer Pennissi after the attack and the cover sheet
4 prepared by Defendant Lewis and signed by Officer Collier.
5 However, as stated above, the statements made in those documents
6 are all accurate. Officer Lewis states that Crime/Incident Reports
7 are necessarily "based on preliminary information, because we have
8 not yet completed a full investigation and do not have all the
9 facts," and Plaintiff "would have been considered a suspect for the
10 alleged conspiracy to murder a correctional officer because he had
11 requested the cell move during which his cell partner attempted to
12 murder a correctional officer." Lewis Decl. at 2. It was the job
13 of the Salinas Valley Investigative Services Unit (ISU), not
14 Defendants, to investigate further. Collier Decl. at 2.

15 During the time Plaintiff was housed in Ad/Seg at CSP, five
16 hearings were held regarding his status. Defendants present
17 evidence that, for each hearing, Plaintiff received advance written
18 notice of the charges, at least twenty-four hours of preparation
19 time, a written statement from the committee explaining the basis
20 for its decision, and the opportunity to present evidence in his
21 defense and call witnesses. Plaintiff has not disputed this
22 evidence. Defendants also present evidence that Plaintiff received
23 these same protections when he was transferred back to Ad/Seg at
24 SVSP. Plaintiff does not dispute this evidence, either. Thus,
25 Plaintiff received all the due process protections required by
26 Wolff.

27 At each hearing at CSP, the ICC determined that Plaintiff
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1 should remain in Ad/Seg because the Senior Hearing Officer had not
2 yet adjudicated the RVR filed against Plaintiff. An investigation
3 regarding Plaintiff's involvement in the stabbing incident was
4 ongoing, and the committee deemed it necessary to keep Plaintiff in
5 Ad/Seg until that investigation was complete. As stated above,
6 California Code of Regulations tit. 15, § 3335(a) permits placement
7 of a prisoner in Ad/Seg if that prisoner's presence in the general
8 population would threaten an ongoing investigation of serious
9 misconduct or criminal activity. When Plaintiff returned to SVSP
10 from CSP, the ICC determined that, until he could be transferred to
11 another prison, Plaintiff should remain in Ad/Seg for his own
12 safety and because Officer Denning, the victim of the attack, did
13 not feel safe around Plaintiff.

14 Thus, the record contains "some evidence" to support the ICC's
15 decision to place Plaintiff in Ad/Seg and SHU at CSP and in Ad/Seg
16 upon his return to SVSP.

17 Defendants also claim that Plaintiff is a member of the Crips
18 gang and Inmates Adegbenro and Kinsey were also Crips members, and
19 that this made Plaintiff a reasonable suspect in the attack.
20 Plaintiff declares that he is not a Crips member and argues that
21 this raises a disputed issue of fact. However, even assuming
22 arguendo that Plaintiff is not a gang member, there is still
23 evidence to support the ICC's decision to place Plaintiff in Ad/Seg
24 and SHU.

25 Because Defendants did not fabricate charges against Plaintiff
26 and did not participate in decisions regarding his transfer or
27 placement, and because Plaintiff received all necessary due process

1 protections during his detention in Ad/Seg and SHU, Defendants are
2 entitled to summary judgment on the due process claim.

3 II. Denial of Access to the Courts Claim

4 Plaintiff claims that Defendants violated his constitutional
5 right to access to the courts by confiscating his legal papers,
6 which he needed for his pending criminal appeal.

7 Prisoners have a constitutional right to be afforded "a
8 reasonably adequate opportunity to present claimed violations of
9 fundamental constitutional rights to the courts." Lewis v. Casey,
10 518 U.S. 343, 351 (1996) (quoting Bounds v. Smith, 430 U.S. 817,
11 825 (1977)). This right applies to prisoners' challenges to their
12 convictions or sentences or conditions of confinement. Id. at 355.
13 Prison officials may not "actively interfer[e] with inmates'
14 attempts to prepare legal documents or file them." Id. at 350
15 (citations omitted). To establish a claim for any violation of the
16 right of access to the courts, prisoners must prove an actual
17 injury by showing that their efforts to pursue a non-frivolous
18 claim concerning their conviction or conditions of confinement has
19 been hindered. Id. at 350-55.

20 Once a prisoner establishes a denial of access to the courts,
21 the court should then determine whether the hindrance of the
22 prisoner's access to court was reasonably related to legitimate
23 penological interests. Id. at 361 (citing Turner v. Safley, 482
24 U.S. 78, 89 (1987)). The denial of access claim will fail if the
25 hindrance of the prisoner's access to court was reasonably related
26 to legitimate penological interests. Id.

27 Although Plaintiff's legal papers were confiscated after the
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1 attack, they were collected by Salinas Valley ISU, not by
2 Defendants. Collier Decl. at 2; Pennisi Decl. at 2; Lewis Decl. at
3 3. After the attack on Officer Denning, Plaintiff's cell was
4 designated a crime scene. Therefore, collection of Plaintiff's
5 property was reasonably related to a legitimate penological
6 interest. Furthermore, as Defendants have shown, Plaintiff
7 eventually received his property, was represented by counsel in his
8 criminal appeal, and was ultimately partially successful in that
9 appeal. Therefore, Plaintiff has failed to show an actual injury
10 or hindrance in his access to the courts, as required by Lewis v.
11 Casey. Defendants are therefore entitled to summary judgment on
12 this claim.

13 III. State Law Claims

14 Plaintiff asserts state law claims against Defendants under
15 California Penal Code §§ 118.1, 132, 133, and 134 and California
16 Code of Regulations tit. 15, §§ 3338 and 3339.

17 The decision to charge an individual with criminal violations
18 is solely within the discretion of the district attorney. Linda R.
19 S. v. Richard D., 410 U.S. 614, 619 (1973) ("[A] private citizen
20 lacks a judicially cognizable interest in the prosecution or
21 nonprosecution of another."); Doyle v. Oklahoma Bar Ass'n, 998 F.2d
22 1559, 1566-67 (10th Cir. 1993) (private citizen has no standing to
23 have lawyer disciplined or criminally charged); Satler v. Johnson,
24 857 F.2d 224, 227 (4th Cir. 1988) (neither member of public at
25 large nor victim has right to have another criminally prosecuted).
26 The California Code of Regulations and Penal Code sections which
27 Plaintiff cites are designed to guide prison staff; they do not

1 provide prisoners with rights to sue. See Sandin, 515 U.S. at 481-
2 82 (prison regulations "guide correctional officials in the
3 administration of a prison" and do not "confer rights on inmates").

4 Because the California statutes cited by Plaintiff do not
5 provide a right to bring a private cause of action, Defendants are
6 entitled to summary judgment on Plaintiff's state claims.

7 IV. Qualified Immunity

8 Defendants also claim qualified immunity, but because the
9 Court has found no constitutional violation, a qualified immunity
10 analysis is not necessary.

11 CONCLUSION

12 For the foregoing reasons, Defendants' motion for summary
13 judgment (Docket #19) is GRANTED in favor of all Defendants.
14 Judgment shall enter accordingly, and the clerk shall close the
15 file. The parties shall bear their own costs.

16 IT IS SO ORDERED.

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18 Dated: 8/22/08
19 CLAUDIA WILKEN
20 United States District Judge
21

22 Copies mailed to counsel
23 as noted on the following page

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

BOBBY LEE,

Plaintiff,

Case Number: CV06-03847 CW

V.

M. COLLIER et al,

Defendant.

CERTIFICATE OF SERVICE

7 M. COLLIER et al,
8 Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

11 That on August 22, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
in the Clerk's office.

15 Lisa M. Sciandra
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17 Robert Lee T-88957
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19 Pelican Bay State Prison
P.O. Box 7500
Crescent City, CA 95531-7500

Dated: August 22, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk